

Employing a Superintendent: From Dating to Divorce

Arkansas School Boards Association
Legal Seminar 2018

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Employing a Superintendent

- **Dating:** The search process
 - To advertise or not
 - Interview questions
 - Interview rubric
 - Veteran preference
- **Marriage:** Making the Offer
 - Model contract
 - Annual evaluation
- **Divorce:** Terminating the Contract
 - Buy-out
 - Separation agreement
 - Freedom of Information Act!!

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Dating

The search process and job offer

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Search Process

- Determine if you are going to stay in-house or open to any qualified superintendent candidate
- You do NOT have to advertise or even interview if you have an in-house candidate in mind
- CAUTION: Staying in-house could lead to a claim of preferential treatment or discrimination if you have more than one "qualified" candidate in the district

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Search Process

- What does a discrimination claim look like?
- The Unsuccessful Candidate Was Not Selected Even Though He/She Was Better Qualified On Account of His/Her Race/Sex/Age/Disability/ National Origin/Etc.
- Board/District Has to Articulate the Legitimate, Non-Discriminatory Reason(s) Why It Selected the Successful Candidate
- If the Reason(s) Are Truly Legitimate, Unsuccessful Candidate Has to Show That The Supposed Legitimate Reason(s) Were A Pretext for Actual Discrimination

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Search Process

- You want to stay in-house and have two administrators with a superintendent certificate; your assistant supt for finance/HR (male) and your federal programs director (female).
- The board prefers the asst supt for finance/HR because it wants someone with a strong finance background, but the female federal programs director has more years in education and in administration. What do you do?
- Thoughts?

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Search Process

- Best Practice Options:
- 1. Interview both candidates using a unique rubric that places greater weight on financial strength. Presumably this would favor your preferred candidate.
- 2. Hire your preferred candidate but have a conversation with the federal programs director explaining your reasoning. Be able to articulate a legitimate, non-discriminatory reason for your hire.
- Try and make good with the federal programs director. Possibly placing her in an assist supt role with more responsibility/ more pay. BUT REMEMBER, only the new supt can make this recommendation to the board.

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Advertising

- List position on the ASBA and AAEA website
- Hire a search firm
 - Additional cost, but...
 - The firm will recruit applicants
 - The firm vets candidates for you, can learn information about the candidate you cannot ask a candidate in interviews
 - More likely to find qualified candidates on a regional and national level
 - Streamlines the process for the board
- Would hiring a search firm keep the initial applicant pool confidential?

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Confidentiality

- There is no expectation of privacy with your applicants.
 - At a minimum, the public would have a right to know the applicant. The applicants entire application packet could be subject to disclosure.
- Never promise confidentiality to an applicant.

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The Rubric

- No standard rubric, you can create a specialized rubric for the position.
- Advantages:
 - Professional
 - Streamlines board deliberation
 - Highly defensible in court
 - Can be created with the perfect applicant in mind
 - i.e. If you need a candidate with strong financial background, you can weight the rubric favoring such a candidate.

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The Rubric

SELECTING A SON-IN-LAW RUBRIC

Criteria	Matthew	Mark	Luke
Cares of your daughter	X	X	X
Good family		X	X
Handsome	X		
Well educated		X	X
Good Job	X	X	
TOTAL	3	4	3

Mark wins. No debate.

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The Rubric

- If finance is your preference, but construction background is not

Experience as District Level Admin	Finance Background	Instructional Background	Construction Background	People Skills
1-10	1-20	1-10	1-5	1-10

- This rubric weighs in favor of the strengths you are seeking.

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Veteran Preference

- Veterans receive a preference when:
 - Selecting applicants to interview; and
 - Selecting the applicant to hire
- "Veteran"
 - Been honorably discharged from a tour of active duty, other than active duty for training only, with the armed forces of the United States; or
 - Served honorably in the National Guard or reserve forces of the United States for a period of at least six (6) years, whether or not the person has retired or been discharged.

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Veteran Preference

- Which "veterans" receive preference?
- Fall under one of the "veteran" categories;
- Be a citizen of Arkansas;
- Indicate the appropriate veteran status on the application; and
- Attach all appropriate supporting documentation.
 - Districts are under no obligation to beg for documents
 - Burden is on applicant to disclose status and include appropriate and necessary document copies

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Veteran Preference

- For your rubric
- Simply designate a bonus number for a qualified veteran indicating preference was given to that candidate.

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Interviews

- Board interviews with candidates can be done in executive session
 - ONLY the board should be present. Not the mayor, leadership team or even the current superintendent
 - Lawfully, the current superintendent, as the top administrative officer, could be present, but not good optics
 - Board needs to take full responsibility for its hire
- Public presentation by the candidate, open to all
- Meetings with leadership team
- Meetings with community leaders
- FOIA: The press would only be invited if it were a public event or a board meeting where candidates were being discussed in open session

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Interviews

• Interview Questions

- Create a set of questions before and do not veer off course.
- Experience
- Philosophy of education
- Experience with curriculum
- Experience with construction
- Experience with finance
- Leadership style
- Vision for your District
- Background questions: education, professional organizations, military experience, government service

- Determine what is important to your District and create a set of questions that allows the applicant freedom to talk openly so you can learn as much as you can

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Interviews

• Questions To Avoid

1. Do you have children under the age of 18?

- This question is usually viewed as discriminatory when asked only of women.

2. Will you have to make arrangements for child care?

- Again, this is a question usually asked of women, but the prohibition is to asking this question of anyone prior to employment.

3. Do you have a credit record?

- Rejecting applicants because of a poor credit rating tends to have a disproportionately greater effect on minority and female applicants. (Many married women have no independent credit history). Such questions are unlawful unless there is a business necessity for the question.

4. Are you pregnant? Or, do you have children?

- Discrimination based on pregnancy is unlawful under Title VII. (Obviously, primarily a concern for female applicants).

5. Have you ever been arrested or convicted of a crime?

- The Equal Employment Opportunity Commission has stated that members of some minority groups are arrested disproportionately more often than whites, so making a personnel decision based on arrest records could have a disparate effect on those groups. (Depending on the position, the employer could have a legitimate interest in excluding such applicants; but the screening process for certification in Arkansas probably would take care of any such concerns).

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Interviews

• Questions To Avoid

6. What is your date of birth?

- Questions which reveal an applicant's age could indicate unlawful age discrimination.

7. When did you graduate from high school or college?

- Same as No. 6, above. However, questions about an applicant's educational qualifications are appropriate. Simply look at their resume.

8. Are you available to work on weekends?

- This innocent-sounding question could be used to screen for applicants whose religion would prohibit working on Fridays, Saturdays or Sundays. Best practice is to ask if the applicant could be available 24/7 in case of deadlines or emergencies.

9. What is the lowest salary you would accept?

- This question could discriminate against women and, perhaps, minorities who might have been paid less in the past.

10. Have you ever filed a workers' compensation claim?

- This question could reveal an applicant's disabilities.

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Interviews

• Questions To Avoid

11. **Do you have a disability? Or, What is the nature of your disability?**
 - The Americans with Disabilities Act prohibits a prospective employer from making any inquiry about an applicant's disability prior to making an offer of employment.
12. **Do you own your home?**
 - Again, this question could indicate discrimination based on income.
13. **What is your religion? Or, where do you go to church?**
 - Discrimination on the basis of religion is prohibited, and asking such questions could indicate that the employer is either screening against certain religions or screening out those who are not religious.
14. **Are you a member of a union?**
 - For a prospective superintendent, this seems unlikely. Nevertheless, it should not be asked. (There are a few superintendents who are members of the AEA).
15. **Do you have any relatives working for the District?**
 - This question could be interpreted to mean that the employer gives a preference to those who have relatives employed in the District. However, the Board needs to know any conflicts of interest.

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The Marriage

Extending an offer, signing a contract, evaluations

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The Offer

- Board president: determine the consensus of the board and material terms.
 - salary ceiling, contract length, will you require Supt to live in the District?
 - This is still in executive session, you have NOT taken action at this point
- Contact applicant, make the offer, get any "necessary terms" from the applicant.
 - My spouse will need a district position
 - I need a moving allowance
 - I must have a 3-year contract
 - My current District provides a car, I need the same

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The Offer

- No Rogue Board Members!
- The board needs one member communicating with the applicants and the candidate
- If a rogue board member is making contact with applicants in an effort to get his first choice over the consensus, it could lead to multiple offers being extended
- Do not discuss this process with media. No official action has been taken at this point. Presently, media would only know the candidates interviewed

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The Contract

- Model contracts provided by ASBA.
- If the board wants special provisions, consult with district counsel.
- Ideally, the contract needs to be presented to the applicant before board approval, but this can be done after board approval if all parties are agreeable to the material terms
- CAUTION: emails between board and applicant and the board and counsel regarding the contract are subject to FOIA

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The Contract

SUPERINTENDENT'S CONTRACT

School District

July 1, 2018 to June 30, 2021

Employment. The Board agrees to employ the Superintendent as Superintendent of the School District ("District") for the period July 1, 2018 ("Effective Date") to June 30, 2021 ("Termination Date"), who shall serve as the District's chief administrative officer, and perform all duties and possess all powers granted by applicable Arkansas law, rules or regulations, and Board policy, until such time as this Agreement expires or is terminated, as provided in paragraph 12. The Superintendent agrees to accept the employment and faithfully discharge the duties incident to it. During the term of this Agreement, the Superintendent agrees to devote his full attention to the performance of these duties, and will perform no other gainful employment or profession.

Compensation. The salary to be paid to the Superintendent effective July 1, 2018 shall be at the annual rate of \$ _____ payable in twelve (12) equal monthly installments.

Duties. The Superintendent shall serve as the chief executive officer of the District, and shall have the powers necessary to perform this duty. All District staff are subject to the direction of the Superintendent and shall be recommended for hire, rehire, termination or nonrenewal by the Superintendent. The Superintendent shall tender an official transcript of all post-secondary course work, a copy of his teaching license, proof of age and any other documents necessary to comply with state or federal law.

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The Contract

SUPERINTENDENT'S CONTRACT

Fitness for Duty. The Superintendent represents that he is fully qualified to serve as Superintendent, and is fit and able to perform all physical and intellectual duties of the office.

Professional Development and Activities. The Superintendent is encouraged and expected to participate in professional activities that will tend to enhance his professional competence and keep him abreast of developments in education and educational administration and his reasonable expenses incident to such activities, subject to Board approval, including meetings, workshops, seminars, and other such programs. The District will pay the dues for the Superintendent to be a member of two state or national organizations that enable the Superintendent to obtain high quality professional development and further the interest of the District. The Superintendent may choose between membership in the Arkansas Association of Educational Administrators, the American Association of School Administrators, the National Association of School Superintendents, and the Arkansas Rural Education Association.

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The Contract

SUPERINTENDENT'S CONTRACT

Physical and Professional Conditions. The parties hereto agree that there shall be filed in the records of the District an official transcript of the Superintendent's post-secondary course work; proof of his date of birth; a current, valid teaching license of the highest grade attainable with college credit; an Arkansas superintendent license; and any other documents necessary to comply with state and federal law. The Superintendent shall be responsible for maintaining his license in good standing for the duration of this Agreement. Any disciplinary suspension of the Superintendent's license by the Professional Licensing Standards Board shall constitute a material breach of this Agreement.

Related Employees. The Superintendent represents to the Board that he is not related to any member of the Board within the degrees prohibited by the laws of the State of Arkansas.

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The Contract

SUPERINTENDENT'S CONTRACT

Vacation, Sick Leave, Employment Benefits and Travel Reimbursement. The Superintendent shall have the same fringe benefits as other contracted full year employees, including but not limited to insurance, vacation and personal days, and shall follow all personnel policies concerning these benefits. The Superintendent may transfer in sick leave days from another Arkansas school district as provided by law. Upon separation from the District, the Superintendent shall be paid for any unused annual sick or vacation leave at his then prevailing daily rate of pay. The Board shall provide the Superintendent with a housing allowance of \$800.00 per month, as he is required to maintain a residence within the boundaries of the District. The Board shall reimburse the Superintendent for business related use of the Superintendent's own vehicle at the rate established pursuant to Board policy. The Board will also permit the Superintendent to submit receipts for reimbursement for approved travel to conferences and meetings, in accordance with District policy.

Equipment. The Superintendent shall use school owned and provided technology for school and business-related purposes, as well as for personal use; however, this use shall not conflict with any school district policy concerning technology or internet use.

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The Contract

SUPERINTENDENT'S CONTRACT

Moving and Relocation Expenses. The Superintendent agrees to relocate and continuously reside within the school district as a term and condition of his employment by the Board. The Superintendent may submit paid receipts for moving and relocation expenses, including expenses incurred while searching for an appropriate dwelling, expenses for packing materials, movers, rental of moving vans or equipment, and up to \$500.00 in personal and family hotel and restaurant expenses, not to exceed \$1,000.00. In the event the Superintendent does not relocate within the first six months of employment, and continuously reside within the school district, it shall constitute a material breach of this Agreement and grounds for termination of this Agreement.

Disability. In the event the Superintendent shall be disabled and unable to perform his duties under this Agreement by reason of sickness, accident, or other cause beyond his control and such disability continues for more than thirty (30) days, the Board may terminate this Agreement. In the event of termination due to disability, the Superintendent shall continue to receive the salary provided for under paragraph 2 of this Agreement for a period of six (6) months from the date the Superintendent becomes disabled and has exhausted any sick leave available to him under paragraph 8 hereof. The Board's decision and determination as to the disability of the Superintendent shall be final.

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The Divorce

Terminating for cause or buying out the contract

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Termination

SUPERINTENDENT'S CONTRACT

- Evaluation and Termination for Cause. The Board shall evaluate the Superintendent at least annually, using the last adopted evaluation instrument for the Superintendent, or the evaluation instrument required by law, if one exists. If the Board does not use an evaluation instrument, but votes to extend the Agreement of the Superintendent, that vote shall constitute an evaluation of the Superintendent's job performance. The failure of the Board to evaluate the Superintendent or to extend the Agreement of the Superintendent into the future as an evaluation of the Superintendent shall not constitute a material breach of this Agreement.
- The Board shall have the right to terminate this Agreement for good cause. In the event the Board exercises such right, the Board shall follow the procedures provided by ARS CODE ANN. § 6-17-1501, et seq., and any supplementary or amending act of the General Assembly of the State of Arkansas in effect at such time. While the parties to this Agreement agree that the Arkansas Teacher Fair Dismissal Act is neither relevant nor controlling as it relates to the termination of a superintendent, notice to the Superintendent shall be provided, and an opportunity to a hearing modeled after the hearing provisions in the Arkansas Teacher Fair Dismissal Act shall be provided in the event that a majority of the Board votes to initiate termination proceedings for material breach of this Agreement, or other just cause. The decision of the Board shall be final. In the event of termination hereunder, the salary and benefits of the Superintendent shall terminate immediately.

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Evaluations

- Should be done annually. Will be difficult to terminate a supt. with cause if you have not evaluated.
- Areas to address:
 - Relationship with board
 - Management skills and abilities
 - Relationship with community
 - Fiscal management
 - Person and professional attitude
 - Public relations
 - Relationship with staff
- ASBA has a new supt evaluation system- see Dr. Anne Butcher

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Buyout

- Board is obligated to pay remainder of supt's contract.
 - 2 year remaining, \$100,000/ yr = \$200,000
 - This is a negotiation. How much will the supt take to resign, understanding he/she can then gain other employment?
- Buyout options
 - (1) Pay a lump sum for the Supt's immediate resignation
 - Payment must be a payroll item, with standard deductions
 - NO TAX FREE BUYOUTS
 - (2) Allow supt to work out remainder of current year, then a lump sum buyout for anything remaining
 - (3) Immediate resignation of supt and pay out remainder of contract or negotiated amount as a monthly paycheck

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Buyout

• Considerations

- If you are wanting an immediate resignation, will you continue to pay the supt's health benefits?
- Do you make an ARTS contribution? No longer required by law (Act 136 of 2017), but it is 14% of the buyout amount
- Need to follow District policies regarding buy-back of sick/vacation days
- If District provides a District home, need to make arrangements to vacate or have supt pay fair market value till he/she can vacate

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•THE END

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